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SENATE BILL NO. 506

2

INTRODUCED BY J. COBB

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE LAWS RELATING TO ALTERNATIVE ENERGY
 5 AND OTHER ENERGY SYSTEMS; PROVIDING A REVOLVING LOAN FUND TO FINANCE ALTERNATIVE
 6 ENERGY SYSTEMS; ~~INCREASING THE WHOLESALE ENERGY TRANSACTION TAX TO FUND THE~~
 7 ~~REVOLVING FUND~~; PROVIDING THAT AIR QUALITY NONCOMPLIANCE PENALTY FEES BE DEPOSITED
 8 IN THE REVOLVING FUND; ELIMINATING BUSINESS PROPERTY TAXES ON CERTAIN GENERATING
 9 EQUIPMENT; PROVIDING A 5-YEAR ABATEMENT OF BUSINESS PROPERTY TAXES ON ~~LARGE~~ SMALL
 10 GENERATING EQUIPMENT; AMENDING VARIOUS TAX AND BONDING INCENTIVE LAWS TO
 11 ENCOURAGE PRODUCTION OF ENERGY BY USING ALTERNATIVE RENEWABLE ENERGY SOURCES;
 12 ~~ELIMINATING THE RURAL ELECTRIC COOPERATIVE UTILITY EXCLUSION FROM NET-METERING;~~
 13 ALLOWING A CONDITIONAL TAX CREDIT FOR WIND ENERGY PRODUCED ON STATE LAND; ALLOWING
 14 AN ELECTRICITY BUYING COOPERATIVE TO SUPPLY OR PROMOTE ALTERNATIVE ENERGY; AMENDING
 15 SECTIONS 7-12-4102, 15-6-156, 15-24-1401, 15-31-124, 15-32-102, ~~15-32-103~~, 15-32-109,
 16 15-32-115, 15-32-201, 15-32-401, 15-32-402, ~~15-72-104~~, ~~15-72-106~~, 15-32-403, 15-72-104,
 17 17-6-403, 17-6-503, 30-16-103, 35-19-104, ~~69-8-103~~, ~~75-2-427~~, 75-2-401, 75-2-413, 80-12-201,
 18 90-4-102, 90-5-101, ~~90-6-701~~, AND 90-8-104, MCA; ~~REPEALING SECTION 6, CHAPTER 323, LAWS~~
 19 ~~OF 1999~~; AND PROVIDING ~~AN~~ EFFECTIVE ~~DATE~~ DATES AND ~~AN~~ APPLICABILITY ~~DATES~~ DATE."

20

21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

22

23 NEW SECTION. **Section 1. Alternative energy revolving loan account.** (1) There is a special
 24 revenue account called the alternative energy revolving loan account to the credit of the department of
 25 environmental quality.

26 (2) The alternative energy revolving loan account consists of money deposited into the account
 27 from the wholesale energy transaction tax as provided in ~~15-72-106~~ and air quality noncompliance penalty
 28 fees PENALTIES from ~~75-2-427~~ 75-2-401 AND 75-2-413 AND MONEY FROM ANY OTHER SOURCE. Any INTEREST
 29 EARNED BY THE ACCOUNT AND ANY interest that is generated from a loan repayment must be deposited into
 30 the account and used to sustain the program.

1 (3) Funds from the alternative energy revolving loan account may be used to provide loans to
2 individuals and small businesses for the purpose of building alternative energy systems, as defined in
3 15-32-102, for residences and small businesses to generate energy for their own use and for net metering
4 as defined in 69-8-103.

5 (4) The amount of a loan may not exceed \$10,000, and the loan must be repaid within 5 years.

6

7 **NEW SECTION. Section 2. Administration of revolving loan account -- rulemaking authority.** (1)

8 The department of environmental quality shall adopt rules establishing:

9 (a) eligibility criteria, including criteria for defining residences and small businesses, OWNERSHIP OF
10 THE ALTERNATIVE ENERGY FACILITY, FINANCIAL CAPACITY TO REPAY THE LOANS, ESTIMATED RETURN ON INVESTMENT IN
11 THE ALTERNATIVE ENERGY, AND OTHER MATTERS THAT THE DEPARTMENT CONSIDERS NECESSARY TO ENSURE REPAYMENT
12 OF LOANS AND TO ENCOURAGE MAXIMUM USE OF THE FUND FOR ALTERNATIVE ENERGY AND NET METERING USES;

13 (b) processes and procedures for disbursing loans, including the agencies or organizations that are
14 allowed to process the loan application for the department; and

15 (c) terms and conditions for the loans, including repayment schedules and interest.

16 (2) The department shall solicit assistance in the development and operation of the program from
17 individuals familiar with financial services and persons knowledgeable in alternative energy systems.

18 (3) Administrative costs may not exceed ~~5%~~ 10% of the total loans. Legal fees and costs
19 associated with collection of debt on principal are not considered administrative fees.

20 (4) The loan repayment period may not exceed 5 years. THE LOANS MUST BE MADE AT A LOW INTEREST
21 RATE. THE DEPARTMENT MAY SET THE INTEREST RATE AT AN AMOUNT THAT WILL COVER ITS ADMINISTRATIVE COSTS, BUT
22 THE RATE MAY NOT BE LESS THAN 1% PER YEAR. The department may seek recovery of the amount of principal
23 loaned in the event of default.

24

25 **NEW SECTION. Section 3. Outcome measures.** The department of environmental quality shall
26 develop reasonable outcome measures by which the success of the alternative energy system loan
27 program provided for in [sections 1 through 3] must be measured on an annual basis. Minimal outcome
28 that must be measured includes:

29 (1) a loan loss ratio of under 5%;

30 (2) the types of alternative energy systems that provided the best overall results for residences

1 and those for small businesses; and

2 (3) a determination of the amount of energy that was produced because of participation in the
3 program.

4

5 **Section 4.** Section 7-12-4102, MCA, is amended to read:

6 **"7-12-4102. Authorization for creation of special improvement districts.** (1) The city or town
7 council ~~has power to~~ may:

8 (a) create special improvement districts, designating them by number;

9 (b) ~~to~~ extend the time for payment of assessments levied upon the districts for district
10 improvements for a period not exceeding 20 years or, if refunding bonds are issued pursuant to
11 7-12-4194, for a period not exceeding 30 years;

12 (c) ~~to~~ make the assessments payable in installments; and

13 (d) ~~to~~ pay all expenses of whatever character incurred in making the improvements with special
14 improvement warrants or bonds.

15 (2) Whenever the public interest or convenience requires, the city council may:

16 (a) create special improvement districts for acquiring by purchase, building, constructing, or
17 maintaining devices intended to protect the safety of the public from open ditches carrying irrigation or
18 other water;

19 (b) create special improvement districts for acquiring by purchase or building and constructing
20 municipal swimming pools and other recreation facilities;

21 (c) create special improvement districts and order the whole or a portion, either in length or width,
22 of one or more of the streets, avenues, alleys, or places or public ways of the city:

23 (i) graded or regraded to the official grade;

24 (ii) planked or replanked;

25 (iii) paved or repaved;

26 (iv) macadamized or remacadamized;

27 (v) graveled or regraveled;

28 (vi) piled or repiled;

29 (vii) capped or recapped;

30 (viii) surfaced or resurfaced;

- 1 (ix) oiled or reoiled;
- 2 (d) create special improvement districts and order the acquisition, construction, or reconstruction
3 within the districts of:
- 4 (i) sidewalks, crosswalks, culverts, bridges, gutters, curbs, steps, parkings (including the planting
5 of grassplots and setting out of trees);
- 6 (ii) sewers, ditches, drains, conduits, and channels for sanitary ~~and/or~~ or drainage purposes, with
7 outlets, cesspools, manholes, catchbasins, flush tanks, septic tanks, connecting sewers, ditches, drains,
8 conduits, channels, and other appurtenances;
- 9 (iii) waterworks, water mains, and extensions of water mains;
- 10 (iv) pipes, hydrants, and hose connections for irrigating purposes;
- 11 (v) appliances for fire protection;
- 12 (vi) tunnels, viaducts, conduits, subways, breakwaters, levees, retaining walls, bulkheads, and
13 walls of rock or other material to protect them from overflow or injury by water;
- 14 (vii) the opening of streets, avenues, and alleys and the planting of trees on the streets, avenues,
15 and alleys;
- 16 (e) create special improvement districts and order the construction or reconstruction in, over, or
17 through property or rights-of-way owned by the city of:
- 18 (i) tunnels, sewers, ditches, drains, conduits, and channels for sanitary ~~and/or~~ or drainage
19 purposes, with necessary outlets, cesspools, manholes, catchbasins, flush tanks, septic tanks, connection
20 sewers, ditches, drains, conduits, channels, and other appurtenances;
- 21 (ii) pipes and hose connections for irrigating; and hydrants and appliances for fire protection;
- 22 (iii) breakwaters, levees, retaining walls, and bulkheads; and
- 23 (iv) walls of rock or other material to protect the streets, avenues, lanes, alleys, courts, places,
24 public ways, and other property in the city from overflow by water;
- 25 (f) create special improvement districts to make monetary advances or contributions to aid in the
26 construction of additional natural gas and electric distribution lines and telecommunications facilities in
27 order to extend those public utility services;
- 28 (g) create special improvement districts and order work to be done that is considered necessary
29 to improve the whole or a portion of the streets, avenues, sidewalks, alleys, places, or public ways,
30 property, or right-of-way of the city;

1 (h) create special improvement districts to acquire and improve by purchase, gift, bequest, lease,
2 or other means land to be designated as public park or open-space land;

3 (i) create special improvement districts for the conversion of overhead utilities to underground
4 locations in accordance with 69-4-311 through 69-4-314; ~~and~~

5 (j) create special improvement districts for the purchase, installation, maintenance, and
6 management of alternative energy production facilities; and

7 ~~(k)~~ maintain, preserve, and care for any of the improvements authorized in this section.

8 (3) The city governing body may order and create special improvement districts covering projects
9 abutting the city limits and include properties outside the city ~~where~~ when the special improvement district
10 abuts and benefits that property. Property owners within the proposed district boundaries outside the city
11 may not be included in the special improvement district if 40% of those property owners protest the
12 creation of the special improvement district. The property outside the city must be treated in a similar
13 manner as to improvements, notices, and assessments as the property inside the city limits. A joint
14 resolution of the city and county must be passed agreeing to the terms of the special improvement district
15 prior to passing the resolution of intention or the resolution creating the special improvement district. A
16 copy of the resolution of intention and the resolution creating the special improvement district must be
17 provided to the county commissioners upon the passage of the respective resolutions."

18

19 **Section 5.** Section 15-6-156, MCA, is amended to read:

20 **"15-6-156. Class thirteen property -- description -- taxable percentage.** (1) Except as provided in
21 subsections (2)(a) through ~~(2)(f)~~ (2)(g), class thirteen property includes:

22 (a) electrical generation facilities of a centrally assessed electric power company;

23 (b) electrical generation facilities owned or operated by an exempt wholesale generator or an entity
24 certified as an exempt wholesale generator pursuant to section 32 of the Public Utility Holding Company
25 Act of 1935, 15 U.S.C. 79z-5a;

26 (c) noncentrally assessed electrical generation facilities owned or operated by any electrical energy
27 producer; and

28 (d) allocations of centrally assessed telecommunications services companies.

29 (2) Class thirteen property does not include:

30 (a) property owned by cooperative rural electric cooperative associations classified under

1 15-6-135;

2 (b) property owned by cooperative rural electric cooperative associations classified under
3 15-6-137;

4 (c) allocations of electric power company property under 15-6-141;

5 (d) electrical generation facilities included in another class of property;

6 (e) property owned by cooperative rural telephone associations and classified in class five; ~~and~~

7 (f) property owned by organizations providing telecommunications services and classified in class
8 five; and

9 (g) generation facilities that are exempt under [section 6].

10 (3) (a) For the purposes of this section, "electrical generation facilities" means any combination
11 of a physically connected generator or generators, associated prime movers, and other associated
12 property, including appurtenant land and improvements and personal property, that are normally operated
13 together to produce electric power. The term includes but is not limited to generating facilities that produce
14 electricity from coal-fired steam turbines, oil or gas turbines, or turbine generators that are driven by falling
15 water.

16 (b) The term does not include electrical generation facilities used for noncommercial purposes or
17 exclusively for agricultural purposes.

18 (c) The term also does not include a qualifying small power production facility, as that term is
19 defined in 16 U.S.C. 796(17), that is owned and operated by a person not primarily engaged in the
20 generation or sale of electricity other than electric power from a small power production facility and
21 classified under 15-6-134 and 15-6-138.

22 (4) Class thirteen property is taxed at 6% of its market value."
23

24 NEW SECTION. Section 6. Energy equipment exemption. (1) (a) Except as provided in subsection
25 (1)(b), the machinery and equipment used in qualifying generation facilities built and operated after [the
26 effective date of this ~~act~~ SECTION] are exempt from taxation.

27 (b) A generation facility that ~~generates~~ HAS A NAMEPLATE CAPACITY OF ~~more~~ LESS than 1 megawatt
28 of electrical energy is exempt from taxation for ONLY 5 years after ~~commercial~~ THE generation of electricity
29 begins.

30 (2) (a) For the purposes of this section, "generation facility" includes any combination of a

1 ~~physically connected~~ generator or generators, associated prime movers, and other associated machinery
 2 and equipment ~~that is necessary for the operation of the noncommercial generator~~ THAT ARE NORMALLY
 3 OPERATED TOGETHER TO PRODUCE ELECTRIC POWER, but does not include the owner's business improvements
 4 and personal property.

5 (b) To qualify for the exemption under this section, the generation facilities ~~may include those~~
 6 MUST BE powered by ~~water, solar energy, fossil fuels, biomass, geothermal, fuel cells, wind, cogeneration,~~
 7 ~~or other processes that do not rely on nuclear fuel~~ SOLAR ENERGY, WATER, BIOMASS, GEOTHERMAL ENERGY, FUEL
 8 CELLS, OR WIND AN ALTERNATIVE RENEWABLE ENERGY SOURCE, AS DEFINED IN 90-4-102.

9

10 **Section 7.** Section 15-24-1401, MCA, is amended to read:

11 **"15-24-1401. Definitions.** The following definitions apply to 15-24-1402 unless the context
 12 requires otherwise:

13 (1) "Expansion" means that the industry has added after July 1, 1987, at least \$50,000 worth
 14 of qualifying improvements or modernized processes to its property within the same jurisdiction either in
 15 the first tax year in which the benefits provided for in 15-24-1402 are to be received or in the preceding
 16 tax year.

17 (2) "Industry" includes but is not limited to a firm that:

18 (a) engages in the mechanical or chemical transformation of materials or substances into products
 19 in the manner defined as manufacturing in the North American Industry Classification System Manual
 20 prepared by the United States office of management and budget;

21 (b) engages in the extraction or harvesting of minerals, ore, or forestry products;

22 (c) engages in the processing of Montana raw materials such as minerals, ore, agricultural
 23 products, and forestry products;

24 (d) engages in the transportation, warehousing, or distribution of commercial products or materials
 25 if 50% or more of the industry's gross sales or receipts are earned from outside the state; ~~or~~

26 (e) earns 50% or more of its annual gross income from out-of-state sales; or

27 (f) engages in the production of ELECTRICAL energy IN AN AMOUNT OF 1 MEGAWATT OR MORE by means
 28 of an alternative renewable energy source as defined in 90-4-102.

29 (3) "New" means that the firm is new to the jurisdiction approving the resolution provided for in
 30 15-24-1402(2) and has invested after July 1, 1987, at least \$125,000 worth of qualifying improvements

1 or modernized processes in the jurisdiction either in the first tax year in which the benefits provided for
2 in 15-24-1402 are to be received or in the preceding tax year. New industry does not include property
3 treated as new industrial property under 15-6-135.

4 (4) "Qualifying" means meeting all the terms, conditions, and requirements for a reduction in
5 taxable value under 15-24-1402 and this section."

6

7 **Section 8.** Section 15-31-124, MCA, is amended to read:

8 **"15-31-124. New or expanded industry credit -- definitions.** As used in 15-31-124 through
9 15-31-127, the following definitions apply:

10 (1) "Department" means the department of revenue.

11 (2) "Expanding" means to expand or diversify a present operation to increase total full-time jobs
12 by 30% or more.

13 (3) "Manufacturing" means:

14 (a) the process of mechanical or chemical transformation of materials or substances into new
15 products, as described in the North American Industry Classification System Manual prepared by the
16 United States office of management and budget; or

17 (b) the production of energy by means of an alternative renewable energy source as defined in
18 90-4-102.

19 (4) (a) "New corporation" means a corporation engaging in manufacturing for the first time in this
20 state. A new corporation includes:

21 (i) a manufacturing corporation existing outside of Montana that enters into manufacturing in the
22 state;

23 (ii) a nonmanufacturing corporation within the state that enters into manufacturing in the state;

24 or

25 (iii) a corporation newly formed in Montana and entering into manufacturing operations in the state.

26 (b) A new corporation does not include:

27 (i) a corporation reorganized from a previously existing corporation that has been engaged in
28 manufacturing in this state; or

29 (ii) a corporation created as a parent, subsidiary, or affiliate of an existing corporation that has been
30 engaged in manufacturing in this state of which 20% or more of the ownership is held by the corporation

1 or by the stockholders of the corporation."

2

3 **Section 9.** Section 15-32-102, MCA, is amended to read:

4 **"15-32-102. Definitions.** As used in this part, the following definitions apply:

5 (1) "Alternative energy system" means the generation system or equipment used to convert
 6 energy sources into usable sources using fuel cells THAT DO NOT REQUIRE HYDROCARBON FUEL, geothermal
 7 systems, low emission wood or biomass, wind, photovoltaics, geothermal, small hydropower plants under
 8 50 kilowatts 1 MEGAWATT, and other recognized nonfossil forms of energy generation.

9 ~~(1)~~(2) "Building" means:

10 (a) a single or multiple dwelling, including a mobile home or manufactured home; or

11 (b) a building used for commercial, industrial, or agricultural purposes that is enclosed with walls
 12 and a roof.

13 ~~(2)~~(3) "Capital investment" means any material or equipment purchased and installed in a building
 14 or land with or without improvements.

15 ~~(3)~~(4) "Energy conservation purpose" means one or both of the following results of an investment:

16 (a) reducing the waste or dissipation of energy; or

17 (b) reducing the amount of energy required to accomplish a given quantity of work.

18 ~~(4)~~(5) "Geothermal system" means a system that transfers energy either from the ground, by way
 19 of a closed loop, or from ground water, by way of an open loop, for the purpose of heating or cooling a
 20 residential building.

21 ~~(5)~~(6) "Low emission wood or biomass combustion device" means a noncatalytic stove or furnace
 22 that:

23 (a) (i) is specifically designed to burn wood pellets or other nonfossil biomass pellets; and

24 (ii) has a particulate emission rate of less than 4.1 grams per hour when tested in conformance
 25 with the standard method for measuring the emissions and efficiencies of residential wood stoves, as
 26 adopted by the department of environmental quality pursuant to 15-32-203; or

27 (iii) has an air-to-fuel ratio of 35 to 1 or greater when tested in conformance with the standard
 28 method for measuring the air-to-fuel ratio and minimum achievable burn rates for wood-fired appliances,
 29 as adopted by the department of environmental quality pursuant to 15-32-203; or

30 (b) burns wood or other nonfossil biomass and has a particulate emission rate of less than 4.1

1 grams per hour when tested in conformance with the standard method for measuring the emissions and
 2 efficiencies of residential wood stoves, as adopted by the department of environmental quality pursuant
 3 to 15-32-203.

4 ~~(6)~~(7) "Passive solar system" means a direct thermal energy system that uses the structure of a
 5 building and its operable components to provide heating or cooling during the appropriate times of the year
 6 by using the climate resources available at the site. It includes only those portions and components of a
 7 building that are expressly designed and required for the collection, storage, and distribution of solar
 8 energy and that are not standard components of a conventional building.

9 ~~(7)~~(8) "Recognized nonfossil forms of energy generation" means:

10 (a) a system that captures energy or converts energy sources into usable sources, including
 11 electricity, by using:

12 (i) solar energy, including passive solar systems;

13 (ii) wind;

14 (iii) solid waste; ~~or~~

15 (iv) the decomposition of organic wastes;

16 (v) geothermal;

17 (vi) fuel cells THAT DO NOT REQUIRE HYDROCARBON FUEL; OR

18 (vii) an alternative energy system;

19 (b) a system that produces electric power from biomass or solid wood wastes; or

20 (c) a small system that uses water power by means of an impoundment that is not over 20 acres
 21 in surface area and produces less than 50 megawatts of electricity."

22

23 ~~Section 10.~~ Section 15-32-103, MCA, is amended to read:

24 ~~"15-32-103. Deduction for energy-conserving investments. (1) In addition to all other deductions~~
 25 ~~from gross corporate income allowed in computing net income under chapter 31, part 1, or individual~~
 26 ~~income allowed in computing net income under chapter 30, part 1, a taxpayer may deduct a portion of~~
 27 ~~his the taxpayer's expenditure for a capital investment in a building for an energy conservation purpose,~~
 28 ~~in accordance with the following schedule:~~

29 ~~(a) If the installation or investment is made in a residential building, 100% of the first \$12,000~~
 30 ~~expended may be deducted over a 4-year period.~~

1 ~~_____ (b) If the installation or investment is made in a building not used as a residence, 100% of the first~~
2 ~~\$20,000 expended may be deducted over a 4-year period.~~

3 If the installation or investment is _____ If the installation or investment
4 made in a residential building: _____ is made in a building not used
5 _____ as a residence:

6 100% of first \$1,000 expended _____ 100% of first \$2,000 expended
7 50% of next \$1,000 expended _____ 50% of next \$2,000 expended
8 20% of next \$1,000 expended _____ 20% of next \$2,000 expended
9 10% of next \$1,000 expended _____ 10% of next \$2,000 expended

10 _____ (2) This tax treatment is subject to approval of the department as provided in 15-32-106 and may
11 not be claimed for so much the portion of the expenditure and capital investment as that is financed by
12 a state, federal, or private grant for energy conservation."

13

14 **Section 10.** Section 15-32-109, MCA, is amended to read:

15 **"15-32-109. Credit for energy-conserving expenditures.** (1) Subject to the restrictions of
16 subsections (2) and (3), a resident individual taxpayer may take ~~as~~ a credit against the taxpayer's tax
17 liability under chapter 30 ~~for all or a portion~~ 25% of his the taxpayer's expenditure for a capital investment
18 in THE PHYSICAL ATTRIBUTES OF a building OR THE INSTALLATION OF A WATER, HEATING, OR COOLING SYSTEM IN THE
19 BUILDING, SO LONG AS EITHER TYPE OF INVESTMENT IS for an energy conservation purpose, ~~determined as~~
20 follows:

21 _____ (a) in the case of an expenditure for a residential building, the lesser of:

22 _____ (i) \$150; or

23 _____ (ii) 5% of the expenditure; and

24 _____ (b) in the case of an expenditure for a building not used as a residence, the lesser of:

25 _____ (i) \$300; or

26 _____ (ii) 5% of the expenditure in an amount not to exceed \$1,500 \$900 \$500.

27 (2) The credit or the sum of the credits under subsection (1):

28 (a) may not exceed the taxpayer's tax liability; and

29 (b) is subject to the provisions of 15-32-104.

30 (3) ~~There is no carryback or~~ The credit allowed under this section may be used as a carry-forward

1 of the credit permitted under this section, and the credit must be applied in the year the expenditure is
 2 incurred, as determined by the taxpayer's accounting method against taxes imposed under chapter 30 for
 3 the 7 succeeding tax years. The entire amount of the credit not used in the year that it was earned must
 4 be carried first to the earliest tax year in which the credit may be applied and then to each succeeding tax
 5 year."

6

7 **Section 11.** Section 15-32-115, MCA, is amended to read:

8 **"15-32-115. Credit for geothermal system -- to whom available -- eligible costs -- limitations.** (1)

9 A resident individual taxpayer who completes installation of a geothermal system, as defined in
 10 15-32-102, in the taxpayer's principal dwelling is entitled to claim a tax credit, as provided in subsection
 11 (3), against the taxpayer's tax liability under chapter 30 for a portion of the installation costs of the
 12 system, ~~up to \$250 per year for 4 years~~ not to exceed \$5,000 \$2,000 \$1,500. ~~The credit may not exceed~~
 13 ~~the taxpayer's income tax liability for the taxable year in which the credit is claimed~~ The amount of the
 14 credit not used in the year in which the installation is made may be carried forward against taxes imposed
 15 under chapter 30 for the 7 succeeding tax years. The entire amount of the credit not used in the year that
 16 it was earned must be carried first to the earliest tax year in which the credit may be applied and then to
 17 each succeeding tax year.

18 (2) For the purposes of this section, installation costs include the cost of:

- 19 (a) trenching, well drilling, casing, and downhole heat exchangers;
 20 (b) piping, control devices, and pumps that move heat from the earth to heat or cool the building;
 21 (c) ground source or ground coupled heat pumps;
 22 (d) liquid-to-air heat exchanger, ductwork, and fans installed with a ground heat well that pump
 23 heat from a well into a building; and
 24 (e) design and labor.

25 ~~(3) The tax credit allowed under this section is deductible from the taxpayer's income tax liability~~
 26 ~~for the taxable year in which the installation costs were incurred and for the next 3 taxable years~~
 27 ~~succeeding the taxable year in which the installation costs were incurred. There is no carryback or~~
 28 ~~carryforward of the credit permitted under this section."~~

29

30 **Section 12.** Section 15-32-201, MCA, is amended to read:

1 **"15-32-201. Amount of credit -- to whom available.** (1) A resident individual taxpayer who
 2 completes installation of an energy system using a recognized nonfossil form of energy generation, as
 3 defined in 15-32-102, in the taxpayer's principal dwelling ~~prior to January 1, 1993~~ after December 31,
 4 2001, ~~or who acquires title to a dwelling prior to January 1, 1993, that is to be used as the taxpayer's~~
 5 ~~principal dwelling and is equipped with an energy system for which the credit allowed by this part has~~
 6 ~~never been claimed~~ is entitled to claim a tax credit in an amount equal to ~~10% of the first \$1,000 and 5%~~
 7 ~~of the next \$3,000 of the cost of the system, including installation costs, less grants received, not to~~
 8 ~~exceed \$5,000~~ \$2,000 \$500, or, if the federal government provides for a tax credit substantially similar
 9 in kind (not in amount), then a tax credit in an amount equal to 5% of the first \$1,000 and 2 1/2% of the
 10 next \$3,000 of the cost of the system, including installation costs, less grants received, against the
 11 income tax liability imposed against the taxpayer pursuant to chapter 30.

12 (2) A resident individual taxpayer who completes installation of an energy system using a low
 13 emission wood or biomass combustion device, as defined in 15-32-102(5)(a), in the taxpayer's principal
 14 dwelling ~~prior to January 1, 1996~~ after December 31, 2001, is entitled to claim a tax credit in an amount
 15 equal to ~~20% of the first \$1,000 and 10% of the next \$3,000 of the cost of the system, including the~~
 16 ~~installation costs, not to exceed \$750~~ \$500, against the income tax liability imposed against the taxpayer
 17 pursuant to Title 15, chapter 30.

18 ~~(3) A resident individual taxpayer who completes installation of an energy system that uses a low~~
 19 ~~emission wood or biomass combustion device, as defined in 15-32-102(5)(b), in the taxpayer's principal~~
 20 ~~dwelling prior to January 1, 1996, is entitled to claim a tax credit in an amount equal to 10% of the first~~
 21 ~~\$1,000 and 5% of the next \$3,000 of the cost of the system, including the installation costs, against the~~
 22 ~~income tax liability imposed against the taxpayer pursuant to Title 15, chapter 30."~~

23

24 **Section 13.** Section 15-32-401, MCA, is amended to read:

25 **"15-32-401. Purpose and statement of policy.** The purpose of this part is to encourage the
 26 development of a ~~wind~~ the alternative energy industry in Montana without adversely affecting tax revenues
 27 revenue received from existing economic activity in the state. Because of the ~~wind~~ alternative energy
 28 potential within the state, it is desirable to encourage ~~wind~~ alternative energy generation for the purpose
 29 of attracting ~~wind~~ alternative energy manufacturing industries to the state. It is also desirable for new or
 30 expanded industry to secure ~~wind-generated~~ alternatively generated electricity on a direct contract sales

1 basis without adversely affecting rates charged to other electricity users. Sound fiscal policy requires that
 2 encouragement be given to a ~~wind~~ an alternative energy industry without subtracting from existing sources
 3 of revenue to the state."

4

5 **Section 14.** Section 15-32-402, MCA, is amended to read:

6 **"15-32-402. Commercial or net metering system investment credit -- ~~wind-generated electricity~~**
 7 **alternative energy systems.** (1) An individual, corporation, partnership, or small business corporation as
 8 defined in 15-31-201 that makes an investment of \$5,000 or more in certain depreciable property
 9 qualifying under section 38 of the Internal Revenue Code of 1954, as amended, for a commercial system
 10 or a net metering system, as defined in 69-8-103, that is located in Montana which and that generates
 11 electricity energy by means of ~~wind power~~ an alternative energy system, as defined in 15-32-102
 12 ALTERNATIVE RENEWABLE ENERGY SOURCE, AS DEFINED IN 90-4-102, is entitled to a tax credit against taxes
 13 imposed by 15-30-103 or 15-31-121 in an amount equal to ~~35% 40%~~ 35% of the eligible costs, to be
 14 taken as a credit only against taxes due as a consequence of taxable or net income produced by one of
 15 the following:

16 (a) manufacturing plants located in Montana that produce ~~wind~~ alternative energy generating
 17 equipment;

18 (b) a new business facility or the expanded portion of an existing business facility for which the
 19 ~~wind~~ alternative energy generating equipment supplies, on a direct contract sales basis, the basic energy
 20 needed; or

21 (c) the ~~wind~~ alternative energy generating equipment in which the investment for which a credit
 22 is being claimed was made.

23 (2) For purposes of determining the amount of the tax credit that may be claimed under subsection
 24 (1), eligible costs include only those expenditures that qualify under section 38 of the Internal Revenue
 25 Code of 1954, as amended, and that are associated with the purchase, installation, or upgrading of:

26 (a) generating equipment;

27 (b) safety devices and storage components;

28 (c) transmission lines necessary to connect with existing transmission facilities; and

29 (d) transmission lines necessary to connect directly to the purchaser of the electricity when no
 30 other transmission facilities are available.

1 (3) Eligible costs under subsection (2) must be reduced by the amount of any grants provided by
2 the state or federal government for the system."

3

4 **SECTION 15.** SECTION 15-32-403, MCA, IS AMENDED TO READ:

5 **"15-32-403. Limitation on credit.** (1) Whenever Except as provided in subsection (2), whenever
6 any federal wind energy tax credits for a system that generates electricity by means of wind power are
7 allowed or allowable under section 48(a) of the Internal Revenue Code (26 U.S.C. 48(a)) or any other
8 federal law, the state credit allowed by 15-32-402 must be reduced by the amount of federal credits so
9 that the effective credit does not exceed 60% of the eligible costs.

10 (2) An individual, corporation, partnership, or small business corporation, as defined in 15-31-201,
11 is exempt from the provisions of subsection (1) of this section if the individual, corporation, partnership,
12 or small business corporation:

13 (a) invests in a commercial system located on state trust land;

14 (b) signs a lease agreement with the state to make annual lease payments to the permanent school
15 trust fund; and

16 (c) offers contracts with a duration of at least 5 years to sell at least 33% of that commercial
17 system's net generating output at the cost of production plus a rate of return not to exceed 12%.

18 (3) The cost of production must be determined by dividing the cost and operation of the
19 commercial system over an appropriate time period by the kilowatt-hour output of the system."

20

21 **SECTION 16.** SECTION 15-72-104, MCA, IS AMENDED TO READ:

22 **"15-72-104. Wholesale energy transaction tax -- rate of tax -- exemptions -- cost recovery.** (1) (a)
23 Except as provided in subsection (3), a wholesale energy transaction tax is imposed upon electricity
24 transmitted within the state as provided in this section. The tax is imposed at a rate of 0.015 cent per
25 kilowatt hour of electricity transmitted by a transmission services provider in the state.

26 (b) For electricity produced in the state for delivery outside of the state, the taxpayer is the person
27 owning or operating the electrical generation facility producing the electricity. The transmission services
28 provider shall collect the tax from the person based upon the kilowatt hours introduced onto transmission
29 lines from the electrical generation facility. The amount of kilowatt hours subject to tax must be reduced
30 by 5% to compensate for transmission line losses.

1 (c) For electricity produced in the state for delivery within the state, the taxpayer is the distribution
2 services provider. The transmission services provider shall collect the tax based upon the amount of
3 kilowatt hours of electricity delivered to the distribution services provider. The taxpayer may apply for a
4 refund for overpayment of taxes pursuant to 15-72-116.

5 (d) For electricity produced outside the state for delivery inside the state, the taxpayer is the
6 distribution services provider. The transmission services provider shall collect the tax based upon the
7 amount of kilowatt hours of electricity delivered to the distribution services provider.

8 (e) For electricity delivered to a distribution services provider that is a rural electric cooperative
9 for delivery to purchasers that have opted for customer choice under the provisions of Title 69, chapter
10 8, part 3, the taxpayer is the distribution services provider. The transmission services provider shall collect
11 the tax based on the amount of kilowatt hours of electricity delivered to the distribution services provider
12 that is attributable to customers that have opted for customer choice.

13 (f) For electricity delivered to a distribution services provider that prior to May 2, 1999, was
14 owned by a public utility as defined in 69-3-101, the tax is imposed on the successor distribution services
15 provider. The transmission services provider shall collect the tax based upon the amount of kilowatt hours
16 of electricity delivered to the distribution services provider.

17 (2) (a) If more than one transmission services provider transmits electricity, the last transmission
18 services provider transmitting or delivering the electricity shall collect the tax.

19 (b) If the transmission services provider is an agency of the United States government, the
20 distribution services provider receiving the electricity shall self-assess the tax subject to the provisions of
21 this part.

22 (c) If an electrical generation facility located within the state produces electricity for sale inside
23 and outside the state, sales within the state are considered to have come from electricity produced within
24 the state for purposes of the tax imposed by this section.

25 (3) (a) Electricity transmitted through the state that is not produced or delivered in the state is
26 exempt from the tax imposed by this section.

27 (b) Electricity produced in the state by an agency of the of the United States government for
28 delivery outside of the state is exempt from the tax imposed by this section.

29 (c) Electricity produced by wind turbines erected on state land for which annual lease payments
30 are made to the permanent school trust fund is exempt from the tax imposed by this section.

1 ~~(e)~~(d) Electricity delivered to a distribution services provider that is a municipal utility described
2 in 69-8-103(5)(b) or a rural electric cooperative organized under the provisions of Title 35, chapter 18, is
3 exempt from the tax imposed by this section.

4 ~~(d)~~(e) Electricity delivered to a purchaser that receives its power directly from a transmission or
5 distribution facility owned by an entity of the United States government on or before May 2, 1997, or
6 electricity that is transmitted exclusively on transmission or distribution facilities owned by an entity of
7 the United States government on or before May 2, 1997, is exempt from the tax imposed by this section.

8 ~~(e)~~(f) Electricity delivered by a distribution services provider to a customer with loads of 1,000
9 kilowatts or greater that was first served by a public utility after December 31, 1996, is exempt from the
10 tax imposed by this section, provided that the customer purchases the electricity pursuant to a contract
11 or contracts that establish the purchase price or prices of electricity. The exemption allowed by this
12 subsection ~~(3)(e)~~ (3)(f) does not apply to electricity purchased under a renewal or extension of an existing
13 contract or existing contracts.]

14 (4) A distribution services provider is allowed to recover the tax imposed by this section and the
15 administrative costs to comply with this part in its rates. (Bracketed language terminates January 1,
16 2003--sec. 40, Ch. 556, L. 1999.)"

17

18 ~~Section 16.~~ Section 15-72-104, MCA, is amended to read:

19 ~~"15-72-104. Wholesale energy transaction tax -- rate of tax -- exemptions -- cost recovery.~~ (1) (a)
20 Except as provided in subsection (3), a wholesale energy transaction tax is imposed upon electricity
21 transmitted within the state as provided in this section. The tax is imposed at a rate of 0.015 0.030 cent
22 per kilowatt hour of electricity transmitted by a transmission services provider in the state.

23 ~~(b) For electricity produced in the state for delivery outside of the state, the taxpayer is the person~~
24 ~~owning or operating the electrical generation facility producing the electricity. The transmission services~~
25 ~~provider shall collect the tax from the person based upon the kilowatt hours introduced onto transmission~~
26 ~~lines from the electrical generation facility. The amount of kilowatt hours subject to tax must be reduced~~
27 ~~by 5% to compensate for transmission line losses.~~

28 ~~(c) For electricity produced in the state for delivery within the state, the taxpayer is the distribution~~
29 ~~services provider. The transmission services provider shall collect the tax based upon the amount of~~
30 ~~kilowatt hours of electricity delivered to the distribution services provider. The taxpayer may apply for a~~

1 ~~refund for overpayment of taxes pursuant to 15-72-116.~~

2 ~~———(d) For electricity produced outside the state for delivery inside the state, the taxpayer is the~~
3 ~~distribution services provider. The transmission services provider shall collect the tax based upon the~~
4 ~~amount of kilowatt hours of electricity delivered to the distribution services provider.~~

5 ~~———(e) For electricity delivered to a distribution services provider that is a rural electric cooperative~~
6 ~~for delivery to purchasers that have opted for customer choice under the provisions of Title 69, chapter~~
7 ~~8, part 3, the taxpayer is the distribution services provider. The transmission services provider shall collect~~
8 ~~the tax based on the amount of kilowatt hours of electricity delivered to the distribution services provider~~
9 ~~that is attributable to customers that have opted for customer choice.~~

10 ~~———(f) For electricity delivered to a distribution services provider that prior to May 2, 1999, was~~
11 ~~owned by a public utility as defined in 69-3-101, the tax is imposed on the successor distribution services~~
12 ~~provider. The transmission services provider shall collect the tax based upon the amount of kilowatt hours~~
13 ~~of electricity delivered to the distribution services provider.~~

14 ~~———(2) (a) If more than one transmission services provider transmits electricity, the last transmission~~
15 ~~services provider transmitting or delivering the electricity shall collect the tax.~~

16 ~~———(b) If the transmission services provider is an agency of the United States government, the~~
17 ~~distribution services provider receiving the electricity shall self-assess the tax subject to the provisions of~~
18 ~~this part.~~

19 ~~———(c) If an electrical generation facility located within the state produces electricity for sale inside~~
20 ~~and outside the state, sales within the state are considered to have come from electricity produced within~~
21 ~~the state for purposes of the tax imposed by this section.~~

22 ~~———(3) (a) Electricity transmitted through the state that is not produced or delivered in the state is~~
23 ~~exempt from the tax imposed by this section.~~

24 ~~———(b) Electricity produced in the state by an agency of the of the United States government for~~
25 ~~delivery outside of the state is exempt from the tax imposed by this section.~~

26 ~~———(c) Electricity delivered to a distribution services provider that is a municipal utility described in~~
27 ~~69-8-103(5)(b) or a rural electric cooperative organized under the provisions of Title 35, chapter 18, is~~
28 ~~exempt from the tax imposed by this section.~~

29 ~~———(d) Electricity delivered to a purchaser that receives its power directly from a transmission or~~
30 ~~distribution facility owned by an entity of the United States government on or before May 2, 1997, or~~

1 electricity that is transmitted exclusively on transmission or distribution facilities owned by an entity of
 2 the United States government on or before May 2, 1997, is exempt from the tax imposed by this section.

3 ~~—— [(e) Electricity delivered by a distribution services provider to a customer with loads of 1,000
 4 kilowatts or greater that was first served by a public utility after December 31, 1996, is exempt from the
 5 tax imposed by this section, provided that the customer purchases the electricity pursuant to a contract
 6 or contracts that establish the purchase price or prices of electricity. The exemption allowed by this
 7 subsection (3)(e) does not apply to electricity purchased under a renewal or extension of an existing
 8 contract or existing contracts.]~~

9 ~~—— (4) A distribution services provider is allowed to recover the tax imposed by this section and the
 10 administrative costs to comply with this part in its rates. (Bracketed language terminates January 1,
 11 2003--sec. 40, Ch. 556, L. 1999.)"~~

12

13 ~~—— **Section 17.** Section 15-72-106, MCA, is amended to read:~~

14 ~~—— **"15-72-106. Collection of wholesale energy transaction tax -- disposition of revenue.** (1) A
 15 transmission services provider shall collect the tax imposed under 15-72-104 from the taxpayer and pay
 16 the tax collected to the department. If the transmission services provider collects a tax in excess of the
 17 tax imposed by 15-72-104, both the tax and the excess must be remitted to the department.~~

18 ~~—— (2) A self-assessing distribution services provider is subject to the provisions of this part.~~

19 ~~—— (3) The wholesale energy transaction tax collected under this part must be deposited as follows:~~

20 ~~—— (a) 50% in the general fund; and~~

21 ~~—— (b) 50% in the alternative energy revolving loan account established in [section 1]."~~

22

23 **Section 17.** Section 17-6-403, MCA, is amended to read:

24 **"17-6-403. Definitions.** As used in this part, the following definitions apply:

25 (1) "Certified community lead organization" means an organization that has sponsored community
 26 certification under the certified communities program of the department.

27 (2) "Certified microbusiness development corporation" means a microbusiness development
 28 corporation certified pursuant to 17-6-408.

29 (3) "Council" means the microbusiness advisory council established in 17-6-411.

30 (4) "Department" means the department of commerce provided for in 2-15-1801.

1 (5) "Development loan" means money loaned to a certified microbusiness development corporation
2 by the department for the purpose of making microbusiness loans under the provisions of this part.

3 (6) "Microbusiness development corporation" means a nonprofit corporation organized and existing
4 under the laws of the state to provide training, technical assistance, and access to capital for the startup
5 or expansion of qualified microbusinesses.

6 (7) "Microbusiness loan" means a loan made from or guaranteed by a revolving loan fund
7 contributed to by the microbusiness finance program.

8 (8) "Program" means the microbusiness finance program established in 17-6-406.

9 (9) "Qualified microbusiness" means a business enterprise located in the state that:

10 (a) produces goods or provides services and has fewer than 10 full-time equivalent employees and
11 annual gross revenues of less than \$500,000; or

12 (b) produces energy using an alternative renewable energy source as defined in 90-4-102.

13 (10) "Revolving loan fund" means a fund required to be established by a certified microbusiness
14 development corporation that receives a development loan."

15

16 **Section 18.** Section 17-6-503, MCA, is amended to read:

17 **"17-6-503. Definitions.** As used in this part, unless the context requires otherwise, the following
18 definitions apply:

19 (1) "Department" means the department of commerce provided for in 2-15-1801.

20 (2) "Job investment administrative account" means the account established in 17-6-509.

21 (3) "Loan review committee" means the committee that is established by the department to
22 consider economic development loan applications for funding by the federal community development block
23 grant program and that is responsible for reviewing and recommending to the department the approval or
24 denial of job investment loans subject to this part and rules implementing this part.

25 (4) "Qualified business" means a business enterprise that either is or will be located in the state,
26 ~~and that produces goods, or provides services,~~ or produces energy using an alternative renewable energy
27 source, as defined in 90-4-102, and that will, as a result of receiving a job investment loan, create jobs
28 for Montana workers."

29

30 **Section 19.** Section 30-16-103, MCA, is amended to read:

1 **"30-16-103. Definitions.** As used in this chapter, the following definitions apply:

2 (1) "Board of review" means the body established to provide policy direction to the department
3 of revenue in designing and recommending to the legislature the implementation of a plan for a business
4 registration and licensing system.

5 (2) "Department" means the department of revenue established in 2-15-1301.

6 (3) (a) "License" means the whole or part of any agency permit, license, certificate, approval,
7 registration, or charter or any form or permission required by law or administrative rule to engage in any
8 retail, wholesale, consumer service, manufacturing, or distributing activity, including the production of
9 energy using an alternative renewable energy source as defined in 90-4-102.

10 (b) License does not include licenses, permits, or registrations issued under Title 30, chapter 10,
11 parts 1 through 3, Title 33, Title 37, and Title 75, chapters 1 through 3, 5 through 7, 10, 15, 16, and 20,
12 which are excluded from the coverage of this chapter.

13 (4) "Person" means an individual, sole proprietorship, partnership, association, cooperative, limited
14 liability company, corporation, nonprofit organization, state or local government agency, or any other
15 organization required to register with the state to do business in Montana and to obtain one or more
16 licenses from the state or any of its agencies.

17 (5) "Plan" means the business registration and licensing system and the procedures developed by
18 the board of review that are under the administrative control of the department."
19

20 **SECTION 20.** SECTION 35-19-104, MCA, IS AMENDED TO READ:

21 **"35-19-104. Permissible purpose of incorporation.** A buying cooperative may be organized under
22 this chapter only for the purpose of supplying electricity to small customers as a default supplier, pursuant
23 to 69-8-403, and for serving as a supplier or promoter of alternative energy and conservation programs."
24

25 ~~Section 19. Section 69-8-103, MCA, is amended to read:~~

26 ~~**"69-8-103. Definitions.** As used in this chapter, unless the context requires otherwise, the
27 following definitions apply:~~

28 ~~(1) "Aggregator" or "market aggregator" means an entity, licensed by the commission, that
29 aggregates retail customers, purchases electric energy, and takes title to electric energy as an intermediary
30 for sale to retail customers.~~

1 ~~———(2) "Assignee" means any entity, including a corporation, partnership, board, trust, or financing~~
 2 ~~vehicle, to which a utility assigns, sells, or transfers, other than as security, all or a portion of the utility's~~
 3 ~~interest in or right to transition property. The term also includes an entity, corporation, public authority,~~
 4 ~~partnership, trust, or financing vehicle to which an assignee assigns, sells, or transfers, other than as~~
 5 ~~security, the assignee's interest in or right to transition property.~~

6 ~~———(3) "Board" means the board of investments created by 2-15-1808.~~

7 ~~———(4) "Broker" or "marketer" means an entity, licensed by the commission, that acts as an agent~~
 8 ~~or intermediary in the sale and purchase of electric energy but that does not take title to electric energy.~~

9 ~~———(5) "Cooperative utility" means:~~

10 ~~———(a) a utility qualifying as an electric cooperative pursuant to Title 35, chapter 18; or~~

11 ~~———(b) an existing municipal electric utility as of May 2, 1997.~~

12 ~~———(6) "Customer" or "consumer" means a retail electric customer or consumer. The university of~~
 13 ~~Montana, pursuant to 20-25-201(1), and Montana state university, pursuant to 20-25-201(2), are each~~
 14 ~~considered a single retail electric customer or consumer with a single individual load.~~

15 ~~———(7) "Customer-generator" means a user of a net metering system.~~

16 ~~———(8) "Default supplier" means a distribution services provider or a person that has received a default~~
 17 ~~supplier license from the commission.~~

18 ~~———(9) "Distribution facilities" means those facilities by and through which electricity is received from~~
 19 ~~a transmission services provider and distributed to the customer and that are controlled or operated by a~~
 20 ~~distribution services provider.~~

21 ~~———(10) "Distribution services provider" means a utility owning distribution facilities for distribution~~
 22 ~~of electricity to the public.~~

23 ~~———(11) "Electricity supplier" means any person, including aggregators, market aggregators, brokers,~~
 24 ~~and marketers, offering to sell electricity to retail customers in the state of Montana.~~

25 ~~———(12) "Financing order" means an order of the commission adopted in accordance with 69-8-503~~
 26 ~~that authorizes the imposition and collection of fixed transition amounts and the issuance of transition~~
 27 ~~bonds.~~

28 ~~———(13) (a) "Fixed transition amounts" means those nonbypassable rates or charges, including but not~~
 29 ~~limited to:~~

30 ~~———(i) distribution;~~

- 1 ~~———(ii) connection;~~
2 ~~———(iii) disconnection; and~~
3 ~~———(iv) termination rates and charges that are authorized by the commission in a financing order to~~
4 ~~permit recovery of transition costs and the costs of recovering, reimbursing, financing, or refinancing the~~
5 ~~transition costs and of acquiring transition property through a plan approved by the commission in the~~
6 ~~financing order, including the costs of issuing, servicing, and retiring transition bonds.~~
7 ~~———(b) If requested by the utility in the utility's application for a financing order, fixed transition~~
8 ~~amounts must include nonbypassable rates or charges to recover federal and state taxes in which the~~
9 ~~transition cost recovery period is modified by the transactions approved in the financing order.~~
10 ~~———(14) "Functionally separate" means a utility's separation of the utility's electricity supply,~~
11 ~~transmission, distribution, and unregulated retail energy services assets and operations.~~
12 ~~———(15) "Interested person" means a retail electricity customer, the consumer counsel established in~~
13 ~~5-15-201, the commission, or a utility.~~
14 ~~———(16) "Large customer" means, for universal system benefits programs purposes, a customer with~~
15 ~~an individual load greater than a monthly average of 1,000 kilowatt demand in the previous calendar year~~
16 ~~for that individual load.~~
17 ~~———(17) "Local governing body" means a local board of trustees of a rural electric cooperative.~~
18 ~~———(18) "Low-income customer" means those energy consumer households and families with incomes~~
19 ~~at or below industry-recognized levels that qualify those consumers for low-income energy-related~~
20 ~~assistance.~~
21 ~~———(19) "Net metering" means measuring the difference between the electricity distributed to and the~~
22 ~~electricity generated by a customer-generator that is fed back to the distribution system during the~~
23 ~~applicable billing period.~~
24 ~~———(20) "Net metering system" means a facility for the production of electric energy that:~~
25 ~~———(a) uses as its fuel solar, wind, geothermal, biomass, fuel cell, or hydropower;~~
26 ~~———(b) has a generating capacity of not more than 50 100 kilowatts;~~
27 ~~———(c) is located on the customer-generator's premises;~~
28 ~~———(d) operates in parallel with the distribution services provider's distribution facilities; and~~
29 ~~———(e) is intended primarily to offset part or all of the customer-generator's requirements for~~
30 ~~electricity.~~

1 ~~———(21) "Nonbypassable rates or charges" means rates or charges that are approved by the~~
2 ~~commission and imposed on a customer to pay the customer's share of transition costs or universal~~
3 ~~system benefits programs costs even if the customer has physically bypassed either the utility's~~
4 ~~transmission or distribution facilities.~~

5 ~~———(22) "Pilot program" means a program using a representative sample of residential and small~~
6 ~~commercial customers to assist in developing and offering customer choice of electricity supply for all~~
7 ~~residential and commercial customers.~~

8 ~~———(23) "Public utility" means any electric utility regulated by the commission pursuant to Title 69,~~
9 ~~chapter 3, on May 2, 1997, including the public utility's successors or assignees.~~

10 ~~———(24) "Qualifying load" means, for payments and credits associated with universal system benefits~~
11 ~~programs, all nonresidential demand-metered accounts of a large customer within the utility's service~~
12 ~~territory in which the customer qualifies as a large customer.~~

13 ~~———(25) "Small customer" means a residential customer or a small commercial customer who has an~~
14 ~~individual account with an average monthly demand in the previous calendar year of less than 100~~
15 ~~kilowatts or a new commercial customer with an estimated average monthly demand of less than 100~~
16 ~~kilowatts of a public utility distribution services provider that has opened access on its distribution system~~
17 ~~pursuant to Title 35, chapter 19, or this chapter.~~

18 ~~———(26) "Transition bondholder" means a holder of transition bonds, including trustees, collateral~~
19 ~~agents, and other entities acting for the benefit of that holder.~~

20 ~~———(27) "Transition bonds" means any bond, debenture, note, interim certificate, collateral, trust~~
21 ~~certificate, or other evidence of indebtedness or ownership issued by the board or other transition bonds~~
22 ~~issuer that is secured by or payable from fixed transition amounts or transition property. Proceeds from~~
23 ~~transition bonds must be used to recover, reimburse, finance, or refinance transition costs and to acquire~~
24 ~~transition property.~~

25 ~~———(28) "Transition charge" means a nonbypassable rate or charge to be imposed on a customer to~~
26 ~~pay the customer's share of transition costs.~~

27 ~~———(29) "Transition cost recovery period" means the period beginning on July 1, 1998, and ending~~
28 ~~when a utility customer does not have any liability for payment of transition costs.~~

29 ~~———(30) "Transition costs" means:~~

30 ~~———(a) a public utility's net verifiable generation-related and electricity supply costs, including costs~~

1 of capital, that become unrecoverable as a result of the implementation of this chapter or of federal law
2 requiring retail open access or customer choice;

3 ~~—— (b) those costs that include but are not limited to:~~

4 ~~—— (i) regulatory assets and deferred charges that exist because of current regulatory practices and~~
5 ~~can be accounted for up to the effective date of the commission's final order regarding a public utility's~~
6 ~~transition plan and conservation investments made prior to universal system benefits charge~~
7 ~~implementation;~~

8 ~~—— (ii) nonutility and utility power purchase contracts, including qualifying facility contracts;~~

9 ~~—— (iii) existing generation investments and supply commitments or other obligations incurred before~~
10 ~~May 2, 1997, and costs arising from these investments and commitments;~~

11 ~~—— (iv) the costs associated with renegotiation or buyout of the existing nonutility and utility power~~
12 ~~purchase contracts, including qualifying facilities and all costs, expenses, and reasonable fees related to~~
13 ~~issuing transition bonds; and~~

14 ~~—— (v) the costs of refinancing and retiring of debt or equity capital of the public utility and associated~~
15 ~~federal and state tax liabilities or other utility costs for which the use of transition bonds would benefit~~
16 ~~customers.~~

17 ~~—— (31) "Transition period" means the period beginning on July 1, 1998, and ending on July 1, 2002,~~
18 ~~unless otherwise extended pursuant to this chapter, during which utilities may phase in customer choice~~
19 ~~of electricity supplier.~~

20 ~~—— (32) "Transition property" means the property right created by a financing order, including without~~
21 ~~limitation the right, title, and interest of a utility, assignee, or other issuer of transition bonds to all~~
22 ~~revenue, collections, claims, payments, money, or proceeds of or arising from or constituting fixed~~
23 ~~transition amounts that are the subject of a financing order, including those nonbypassable rates and other~~
24 ~~charges and fixed transition amounts that are authorized by the commission in the financing order to~~
25 ~~recover transition costs and the costs of recovering, reimbursing, financing, or refinancing the transition~~
26 ~~costs and acquiring transition property, including the costs of issuing, servicing, and retiring transition~~
27 ~~bonds. Any right that a utility has in the transition property before the utility's sale or transfer or any other~~
28 ~~right created under this section or created in the financing order and assignable under this chapter or~~
29 ~~assignable pursuant to a financing order is only a contract right.~~

30 ~~—— (33) "Transmission facilities" means those facilities that are used to provide transmission services~~

1 as determined by the federal energy regulatory commission and the commission.

2 ~~———— (35)(34) "Transmission services provider" means a person controlling or operating transmission~~
3 ~~facilities.~~

4 ~~———— (35) "Universal system benefits charge" means a nonbypassable rate or charge to be imposed on~~
5 ~~a customer to pay the customer's share of universal system benefits programs costs.~~

6 ~~———— (36) "Universal system benefits programs" means public purpose programs for:~~

7 ~~———— (a) cost-effective local energy conservation;~~

8 ~~———— (b) low-income customer weatherization;~~

9 ~~———— (c) renewable resource projects and applications, including those that capture unique social and~~
10 ~~energy system benefits or that provide transmission and distribution system benefits;~~

11 ~~———— (d) research and development programs related to energy conservation and renewables;~~

12 ~~———— (e) market transformation designed to encourage competitive markets for public purpose programs;~~

13 ~~and~~

14 ~~———— (f) low-income energy assistance.~~

15 ~~———— (37) "Utility" means any public utility or cooperative utility."~~

16

17 ~~———— **Section 22.** Section 75-2-427, MCA, is amended to read:~~

18 ~~———— **"75-2-427. Deposit of noncompliance penalty fees.** All noncompliance penalties collected by the~~
19 ~~department pursuant to 75-2-421 through 75-2-429 shall must be deposited in the state special revenue~~
20 ~~fund until a final determination and adjustment have been made as provided in 75-2-424 and amounts~~
21 ~~have been deducted by the department for costs attributable to implementation of 75-2-421 through~~
22 ~~75-2-429 and for contract costs incurred pursuant to 75-2-422(3), if any. After a final determination has~~
23 ~~been made and additional payments or refunds have been made, the penalty money remaining shall must~~
24 ~~be transferred to the state general fund alternative energy revolving loan account established in section~~
25 ~~11."~~

26

27 ~~**SECTION 21.** SECTION 75-2-401, MCA, IS AMENDED TO READ:~~

28 ~~**"75-2-401. Enforcement -- notice -- order for corrective action -- administrative penalty.** (1) When~~
29 ~~the department believes that a violation of this chapter, a rule adopted under this chapter, or a condition~~
30 ~~or limitation imposed by a permit issued pursuant to this chapter has occurred, it may cause written notice~~

1 to be served personally or by certified mail on the alleged violator or the violator's agent. The notice must
2 specify the provision of this chapter, the rule, or the permit condition or limitation alleged to be violated
3 and the facts alleged to constitute a violation. The notice may include an order to take necessary
4 corrective action within a reasonable period of time stated in the order or an order to pay an administrative
5 penalty, or both. The order becomes final unless, within 30 days after the notice is received, the person
6 named requests in writing a hearing before the board. On receipt of the request, the board shall schedule
7 a hearing.

8 (2) If, after a hearing held under subsection (1), the board finds that violations have occurred, it
9 shall issue an appropriate order for the prevention, abatement, or control of the emissions involved or for
10 the taking of other corrective action or assess an administrative penalty, or both. As appropriate, an order
11 issued as part of a notice or after a hearing may prescribe the date by which the violation must cease; time
12 limits for particular action in preventing, abating, or controlling the emissions; or the date by which the
13 administrative penalty must be paid. If, after a hearing on an order contained in a notice, the board finds
14 that a violation has not occurred or is not occurring, it shall rescind the order.

15 (3) (a) An action initiated under this section may include an administrative civil penalty of not more
16 than \$10,000 for each day of each violation, not to exceed a total of \$80,000. If an order issued by the
17 board under this section requires the payment of an administrative civil penalty, the board shall state
18 findings and conclusions describing the basis for its penalty assessment.

19 (b) Administrative penalties collected under this section must be deposited in the ~~state general~~
20 ~~fund~~ alternative energy revolving loan account established in [section 1].

21 (c) Penalties imposed by an administrative order under this section may not be assessed for any
22 day of violation that occurred more than 12 months prior to the issuance of the initial notice and order by
23 the department under subsection (1).

24 (d) In determining the amount of penalty to be assessed for an alleged violation under this section,
25 the department or board, as appropriate, shall consider:

26 (i) the alleged violator's ability to pay and the economic impact of the penalty on the alleged
27 violator;

28 (ii) the alleged violator's full compliance history and good faith efforts to comply;

29 (iii) the duration of the violation as established by any credible evidence, including evidence other
30 than the applicable test method;

- 1 (iv) payment by the violator of penalties previously assessed for the same violation;
- 2 (v) the economic benefit of noncompliance;
- 3 (vi) the seriousness of the violation; and
- 4 (vii) other matters as justice may require.
- 5 (4) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter
- 6 4, part 6, apply to a hearing conducted under this section.
- 7 (5) Instead of issuing the order provided for in subsection (1), the department may either:
- 8 (a) require that the alleged violators appear before the board for a hearing at a time and place
- 9 specified in the notice and answer the charges complained of; or
- 10 (b) initiate action under 75-2-412 or 75-2-413.
- 11 (6) This chapter does not prevent the board or department from making efforts to obtain voluntary
- 12 compliance through warning, conference, or any other appropriate means.
- 13 (7) In connection with a hearing held under this section, the board may and on application by a
- 14 party shall compel the attendance of witnesses and the production of evidence on behalf of the parties."

15

16 **SECTION 22. SECTION 75-2-413, MCA, IS AMENDED TO READ:**

17 **"75-2-413. Civil penalties -- out-of-state litigants -- effect of action -- presumption of continuing**

18 **violation under certain circumstances.** (1) A person who violates any provision of this chapter, a rule

19 adopted under this chapter, or any order or permit made or issued under this chapter is subject to a civil

20 penalty not to exceed \$10,000 per violation. Each day of each violation constitutes a separate violation.

21 The department may institute and maintain in the name of the state any enforcement proceedings under

22 this section. Upon request of the department, the attorney general or the county attorney of the county

23 of violation shall petition the district court to impose, assess, and recover the civil penalty. The civil

24 penalty is in lieu of the criminal penalty provided for in 75-2-412, except for civil penalties for violation

25 of the operating permit program required by Subchapter V of the federal Clean Air Act.

26 (2) (a) Action under subsection (1) is not a bar to enforcement of this chapter or of a rule, order,

27 or permit made or issued under this chapter by injunction or other appropriate civil remedies.

28 (b) An action under subsection (1) or to enforce this chapter or a rule, order, or permit made or

29 issued under this chapter may be brought in the district court of any county where a violation occurs or

30 is threatened if the defendant cannot be located in Montana.

1 (3) If the department has notified a person operating a commercial hazardous waste incinerator
 2 of a violation and if the department makes a prima facie showing that the conduct or events giving rise
 3 to the violations are likely to have continued or recurred past the date of notice, the days of violation are
 4 presumed to include the date of the notice and every day after the notice until the person establishes that
 5 continuous compliance has been achieved. This presumption may be overcome to the extent that the
 6 person operating a commercial hazardous waste incinerator can prove by a preponderance of evidence that
 7 there were intervening days when a violation did not occur, that the violation was not continuing in nature,
 8 or that the telemetering device was compromised or otherwise tampered with.

9 (4) Money collected under this section must be deposited in the ~~state general fund~~ alternative
 10 energy revolving loan account established in [section 1]. This subsection does not apply to money
 11 collected by an approved local air pollution control program."
 12

13 **Section 23.** Section 80-12-201, MCA, is amended to read:

14 **"80-12-201. Loan agreements -- general provisions.** (1) Each loan approved by the authority for
 15 issuance of a bond must include a loan agreement providing a payment schedule that may not exceed 30
 16 years.

17 (2) The agreement must specify a reasonable rate of interest, which rate may be a variable rate
 18 provided the method of determination is contained in the loan agreement.

19 (3) Loans approved by the authority for issuance of a bond may be secured by any liens or
 20 collateral the financial institution considers necessary.

21 (4) The money received under a loan agreement may be used for:

22 (a) acquisition of farm or ranch land;

23 (b) a down payment on the acquisition of farm or ranch land; ~~or~~

24 (c) acquisition or construction of depreciable property used in the operation of a farm or ranch;

25 or

26 (d) production of energy using an alternative renewable energy source as defined in 90-4-102."
 27

28 **Section 24.** Section 90-4-102, MCA, is amended to read:

29 **"90-4-102. Definitions.** As used in this part, the following definitions apply:

30 (1) "Alternative renewable energy source" means a form of energy or matter, such as solar

1 energy, wind energy, geothermal energy, conversion of biomass, fuel cells THAT DO NOT REQUIRE
 2 HYDROCARBON FUEL, small hydroelectric generators producing less than ~~50 kilowatts~~ 1 MEGAWATT, or
 3 methane from solid waste, that is capable of being converted into forms of energy useful to mankind,
 4 including electricity, and the technology necessary to make this conversion, when the source is not
 5 exhaustible in terms of this planet and when the source or the technology are not in general commercial
 6 use.

7 (2) "Department" means the department of environmental quality.

8 (3) "Energy conservation" means reducing waste or dissipation of energy or reducing the amount
 9 of energy required to accomplish a given quantity of work through increases in efficiency of energy use,
 10 production, or distribution.

11 (4) "Person" means a natural person, a corporation, partnership, or other business entity, an
 12 association, trust, or foundation, any educational or scientific institution, or any governmental unit.

13 (5) (a) "State governmental unit" means:

14 (i) the state;

15 (ii) the legislature;

16 (iii) any executive branch department, office, or agency;

17 (iv) the university system; or

18 (v) the supreme court or any office of the supreme court.

19 (b) The term does not include:

20 (i) a county, incorporated city, town, or other local governmental unit or a public corporation or
 21 district created pursuant to state law; or

22 (ii) any other public body of the state not described in subsection (5)(a)."

23

24 **Section 25.** Section 90-5-101, MCA, is amended to read:

25 **"90-5-101. Definition of terms.** As used in this part, unless the context otherwise requires, the
 26 following definitions apply:

27 (1) "Agricultural enterprises" include but are not limited to producing, warehousing, storing,
 28 fattening, treating, handling, distributing, or selling farm products or livestock.

29 (2) "Bonds" means bonds, refunding bonds, notes, or other obligations issued by a municipality
 30 or county under the authority of this part, including without limitation short-term bonds or notes issued

1 in anticipation of the issuance of long-term bonds or notes.

2 (3) "Governing body" means the board or body in which the general legislative powers of the
3 municipality or county are vested.

4 (4) "Higher education facilities" means any real or personal properties required or useful for the
5 operation of an institution of higher education.

6 (5) "Institution of higher education" means any private, nonprofit corporation or institution within
7 the state of Montana:

8 (a) authorized to provide or operate educational facilities; and

9 (b) providing a program of education beyond the high school level.

10 (6) "Mortgage" means a mortgage or deed of trust or other security device.

11 (7) "Municipality" means any incorporated city or town in the state.

12 (8) "Project" means any land; any building or other improvement; and any other real or personal
13 properties considered necessary in connection with the improvement, whether or not now in existence,
14 which must be suitable for use for commercial, manufacturing, agricultural, or industrial enterprises;
15 recreation or tourist facilities; local, state, and federal governmental facilities; multifamily housing,
16 hospitals, long-term care facilities, community-based facilities for individuals who are persons with
17 developmental disabilities as defined in 53-20-102, or medical facilities; higher education facilities;
18 ~~small-scale~~ hydroelectric production facilities with a capacity of ~~50-100~~ 50 megawatts or less; the
19 production of energy using an alternative renewable energy source as defined in 90-4-102; and any
20 combination of these projects."

21

22 ~~Section 25. Section 90-6-701, MCA, is amended to read:~~

23 ~~"90-6-701. Treasure state endowment program created -- definitions. (1) (a) There is a treasure~~
24 ~~state endowment program that consists of:~~

25 ~~(i) the treasure state endowment fund established in 17-5-703;~~

26 ~~(ii) the infrastructure portion of the coal severance tax bond program provided for in 17-5-701(2).~~

27 ~~(b) The treasure state endowment program may borrow from the board of investments to provide~~
28 ~~additional financial assistance for local government infrastructure projects under this part, provided that~~
29 ~~no part of the loan may be made from retirement funds.~~

30 ~~(2) Interest from the treasure state endowment fund and from proceeds of the sale of bonds under~~

1 ~~17-5-701(2) may be used to provide financial assistance for local government infrastructure projects under~~
 2 ~~this part and to repay loans from the board of investments.~~

3 ~~—— (3) As used in this part, the following definitions apply:~~

4 ~~—— (a) "Infrastructure projects" means:~~

5 ~~—— (i) drinking water systems;~~

6 ~~—— (ii) wastewater treatment;~~

7 ~~—— (iii) sanitary sewer or storm sewer systems;~~

8 ~~—— (iv) systems for the production of energy using an alternative renewable energy source as defined~~
 9 ~~in 90-4-102;~~

10 ~~—— (iv)(v) solid waste disposal and separation systems, including site acquisition, preparation, or~~
 11 ~~monitoring; or~~

12 ~~—— (v)(vi) bridges.~~

13 ~~—— (b) "Local government" means an incorporated city or town, a county, a consolidated local~~
 14 ~~government, a tribal government, a county or multicounty water, sewer, or solid waste district, or an~~
 15 ~~authority as defined in 75-6-304.~~

16 ~~—— (c) "Treasure state endowment fund" means the coal severance tax infrastructure endowment~~
 17 ~~fund established in 17-5-703(1)(b).~~

18 ~~—— (d) "Treasure state endowment program" means the local government infrastructure investment~~
 19 ~~program established in subsection (1).~~

20 ~~—— (e) "Tribal government" means a federally recognized Indian tribe within the state of Montana."~~

21

22 **Section 26.** Section 90-8-104, MCA, is amended to read:

23 **"90-8-104. Definitions.** As used in this chapter, unless the context requires otherwise, the
 24 following definitions apply:

25 (1) "Capital base" means equity capital raised by a certified Montana capital company or by a
 26 certified Montana small business investment capital company for which tax credits were claimed under
 27 this chapter.

28 (2) "Certified Montana capital company" or "certified Montana small business investment capital
 29 company" means:

30 (a) a development credit corporation created pursuant to Title 32, chapter 4; or

1 (b) a profit or nonprofit entity organized and existing under the laws of Montana, created for the
2 purpose of making venture or risk capital available for qualified investments and that has been certified
3 by the department.

4 (3) "Department" means the department of commerce.

5 (4) "Montana business" means a business ~~which~~ that is located or principally based within
6 Montana.

7 (5) "Qualified investment" means an investment that does not violate any of the provisions of this
8 chapter, that does not displace other sources of equity or debt financing that are available to the project
9 unless the department determines that the investment furthers the purposes of this chapter, and that is:

10 (a) a debt or equity financing of a Montana business that meets both of the following criteria:

11 (i) the business is engaged in one or more of the following activities:

12 (A) manufacturing;

13 (B) agricultural, fishery, or forestry production and processing;

14 (C) mineral production and processing, except for conventional oil and gas exploration;

15 (D) recognized nonfossil forms of energy generation or the manufacture of low emission wood or
16 biomass combustion devices as defined in 15-32-102;

17 (E) transportation;

18 (F) research and development of products or processes associated with any of the activities
19 enumerated in ~~A through E above~~ subsections (5)(a)(i)(A) through (5)(a)(i)(E);

20 (G) wholesale or retail distribution activities for which products produced in Montana comprise
21 50% or more of the gross sales receipts;

22 (H) any activity conducted in the state for which 50% or more of the gross receipts are derived
23 from the sale of products or services outside Montana; ~~and~~

24 (I) tourism; and

25 (J) the production of energy using an alternative renewable energy source as defined in 90-4-102;

26 and

27 (ii) the business is a small business as defined in rules adopted by the department and is a small
28 business pursuant to the regulations promulgated by the United States small business administration at
29 13 CFR 121, et seq.;

30 (b) a debt or equity financing of a business outside Montana if the investment is likely to produce

1 a qualified investment in Montana, as long as the investment does not exceed 25% of the capital base of
2 the capital company; or

3 (c) a debt or equity financing of an acquisition of a non-Montana business that will be relocated
4 in Montana.

5 (6) "Qualified Montana capital company" means a certified Montana capital company that has
6 been designated a qualified capital company under the provisions of 90-8-202 so that investors in the
7 company may receive the tax credits authorized in 90-8-202.

8 (7) "Qualified Montana small business investment capital company" means a certified Montana
9 small business investment capital company that has been designated as a qualified small business
10 investment capital company under the provisions of 90-8-202 so that investors in the company may
11 receive the tax credits authorized in 90-8-202."

12

13 ~~NEW SECTION. Section 28. Repealer. Section 6, Chapter 323, Laws of 1999, is repealed.~~

14

15 NEW SECTION. Section 27. Codification instruction. (1) [Sections 1 through 3] are intended to
16 be codified as an integral part of Title 75, and the provisions of Title 75 apply to [sections 1 through 3].

17 (2) [Section 6] is intended to be codified as an integral part of Title 15, chapter 6, part 2, and the
18 provisions of Title 15, chapter 6, part 2, apply to [section 6].

19

20 NEW SECTION. SECTION 28. SEVERABILITY. IF A PART OF [THIS ACT] IS INVALID, ALL VALID PARTS THAT ARE
21 SEVERABLE FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF [THIS ACT] IS INVALID IN ONE OR MORE OF ITS
22 APPLICATIONS, THE PART REMAINS IN EFFECT IN ALL VALID APPLICATIONS THAT ARE SEVERABLE FROM THE INVALID
23 APPLICATIONS.

24

25 NEW SECTION. Section 29. Effective date DATES. [This act] (1) EXCEPT AS PROVIDED IN SUBSECTION
26 (2), [THIS ACT] is effective July 1, 2001.

27 (2) [SECTIONS 1 THROUGH 3, 21, 22, AND 27 AND THIS SECTION] ARE EFFECTIVE ON PASSAGE AND APPROVAL.

28

29 NEW SECTION. Section 30. Applicability. (1) [Sections 6 through 12; and 14] apply to tax
30 years beginning after December 31, 2001.

- 1 ~~——(2) [Section 16] applies to electricity transmitted after June 30, 2001.~~
- 2 ~~——(3) [Section 17] applies to collections from 15-72-104 after June 30, 2001.~~
- 3

- END -